



U.S. Citizenship  
and Immigration  
Services

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invasion of personal privacy

EL

[REDACTED]

FILE:

[REDACTED]

Office: CLEVELAND, OH

Date:

MAR 30 2007

IN RE:

Applicant:

[REDACTED]

APPLICATION:

Application to Preserve Residence for Naturalization Purposes under Section 316(b) of the Immigration and Nationality Act, 8 U.S.C. § 1427(b).

ON BEHALF OF APPLICANT:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application to preserve residence for naturalization purposes was denied by the District Director, Cleveland, Ohio. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant seeks to preserve her residence for naturalization purposes pursuant to section 316(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1427(b), as a lawful permanent resident who is employed by an American firm or corporation engaged in whole or in part in the development of foreign trade and commerce of the United States, or a subsidiary thereof more than 50 per centum of whose stock is owned by an American firm or corporation.

The district director determined that the applicant was not eligible for benefits under section 316(b) of the Act because the record failed to establish that she had been physically present in the United States for an uninterrupted period of at least one year after being lawfully admitted for permanent residence in the United States. The application was denied accordingly.

On appeal, the applicant clarifies, through counsel, that although she has spent time abroad for employment purposes, she has not, at any point relinquished her residence in the United States. The applicant asserts further that she meets the physical presence requirements set forth in section 316(b) of the Act. The applicant's reasoning is based on the assertion that: 1) the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) provides that a U.S. lawful permanent resident is not regarded as seeking admission to the United States if he or she has not abandoned or relinquished permanent resident status, nor has been absent in excess of 180 days; and 2) under IIRIRA, a lawful permanent resident as defined is no longer considered to be making an entry into the United States. The lawful permanent resident is thus considered to be physically present in the United States during brief casual and innocent sojourns outside the United States.

Section 316(a)(1) of the Act, 8 U.S.C. § 1427(a)(1) provides in pertinent part that:

No person . . . shall be naturalized, unless such applicant, (1) immediately preceding the date of filing his application for naturalization has resided continuously, after being lawfully admitted for permanent residence, within the United States for at least five years and during the five years immediately preceding the date of filing his application has been physically present therein for periods totaling at least half of that time . . . .

Section 316(b) of the Act, 8 U.S.C. § 1427(b) addresses the effect of absences during the required five-year period of continuous residence, and provides in pertinent part that:

[A]bsence from the United States for a continuous period of one year or more during the period for which continuous residence is required for admission to citizenship . . . shall break the continuity of such residence except that in the case of a person who has been physically present and residing in the United States after being lawfully admitted for permanent residence for an uninterrupted period of at least one year and who thereafter . . . is employed by an American firm or corporation engaged in whole or in part in the development of foreign trade and commerce of the United States, or a subsidiary thereof more than 50 per centum of whose stock is owned by an American firm or corporation.

It is noted that the applicant has been employed by The Goodyear Tire and Rubber Company since 1997. The company's status as an American firm or corporation is not addressed in the district director's decision, and is not at issue in the present appeal.

The applicant was admitted to the United States as a lawful permanent resident on January 26, 2002. The applicant's Form N-470, Application to Preserve Residence for Naturalization Purposes (Form N-470) reflects that since her admission as a lawful permanent resident, the applicant was absent from the U.S. for business purposes on the following dates:

March 2 - March 8, 2002;  
June 14 - June 22, 2002;  
August 18 - August 24, 2002;  
May 9 - May 17, 2003;  
June 20 - June 27, 2003;  
July 16 - July 22, 2003;  
August 9 - August 15, 2003;  
October 13 - October 31, 2003;  
December 7 - December 13, 2003;  
February 9 - February 18, 2004;  
January 25 - February 1, 2005;  
February 11 - February 20, 2005;  
March 6 - March 12, 2005;  
July 18 - July 29, 2005.

The Form N-470 reflects that the applicant will work and reside in Brazil for three years between September 30, 2005 and September 1, 2008.

Upon review of the above evidence, the AAO finds that the applicant has not been physically present in the United States for an uninterrupted period of at least one year since she obtained lawful permanent resident status, as required by section 316(b) of the Act. The AAO is unconvinced by the applicant's assertion that she meets section 316(b) physical presence requirements based on the lawful permanent resident admission provisions of IIRIRA. The applicant provides no independent legal basis for her assertions. Moreover, the Board of Immigration Appeals clearly held in *Matter of Graves*, 19 I&N Dec. 337, 339 (Comm. 1985) that, "[i]t is not possible to construe the uninterrupted physical presence requirement of section 316(b) to allow departures." In *Matter of Copeland*, 19 I&N Dec. 788, 789 (BIA 1988), the Board of Immigration Appeals reaffirmed its holding in *Matter of Graves* and stated further that:

[A]ny departure from the United States for any reason or period of time bars a determination that an alien has been continuously physically present in the United States or present in the United States for an uninterrupted period during the period including the departure. An applicant's failure to establish he or she has been present in the United States for 1 year after lawful admission for permanent residence bars eligibility for preservation under section 316(b).

The AAO notes that the applicant makes reference to the *Matter of Graves* and *Matter of Copeland* decisions in a footnote on appeal. The references do not assert a legal basis for not following the *Matter of Graves* and

*Matter of Copeland* holdings in the present case. Furthermore, Volume 8 of the Code of Federal Regulations (8 C.F.R.) sections 103.3(c) and 1003.1(g), provides that published Board of Immigration Appeals (BIA) decisions are binding on U.S. Citizenship and Immigration Services (CIS) in its administration of the Act unless or until the decisions are modified or overruled by later precedent decisions. Because the BIA decisions relevant to the present case (*Matter of Graves* and *Matter of Copeland*) have not been modified or overruled, the AAO must apply their provisions to the applicant's case.

The burden of proof in these proceedings rests solely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. The applicant in the present matter has failed to establish that she was physically present in the U.S. for an uninterrupted period of at least one year after being lawfully admitted for permanent residence. The applicant is thus ineligible for preservation of her residence for naturalization purposes under section 316(b) of the Act. The appeal will therefore be dismissed and the application denied.

**ORDER:** The appeal is dismissed. The application is denied.